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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-370

CITY OF WEST HAVEN,

Petitioner,

v.

THOMAS TURPIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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Pursuant to Rule 24(5) of the Rules of this Court, petitioner, City of West Haven, submits this supplemental brief to bring to the attention of the Court cases and other matter not available to counsel for petitioner at the time of the filing of the Petition for a Writ of Certiorari.

The opinion of the United States Court of Appeals in this action is now reported as *Turpin v. Mailet,* 579 F.2d 152 (2d Cir. 1978).

A principal question raised by the Petition is whether municipalities are subject to liability for money damages in an action implied directly from the fourteenth amendment to the United States Constitution for constitutional violations allegedly committed by their employees.

The initial reason advanced for allowance of the writ is that a conflict exists among the several circuits with respect to whether such a cause of action may be implied of the rationale expressed in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Since filing the Petition, a decision has been published in *Molina v. Richardson*, 578 F.2d 846 (9th Cir. 1978).

In that action, which has factual parallels to the instant action, the Ninth Circuit declined to sanction such a cause of action.

The *Molina* court addressed matters raised in points II and III(A) of the Petition, concluding that it is neither necessary, nor appropriate, to imply the constitutional cause of action, in light of the adequacy of the remedy now available under 42 U.S.C. §1983.

This decision is of particular interest, since it appears to be the first published decision of any Court of Appeals, subsequent to the decision by the Court in *Monell v. Department of Social Services of the City of New York*, 98 S.Ct. 2018 (1978), dealing with actions under 42 U.S.C. §1983, and causes of action asserted directly under the fourteenth amendment.

Insofar as the decision in *Molina* declined to sanction a fourteenth amendment cause of action, it is in conflict with the Second Circuit.

The extent of the conflict among the cirucits, prior to the decision in *Monell*, is reflected in Comment, *Municipal Liability for Constitutional Violations: Can You Fight City Hall? A Survey of the Circuits*, 16 Duq. L. Rev. 373 (1977-78), which was indexed subsequent to filing the Petition. While this survey does not reflect the most recent judicial activity on this topic, including neither the decision of the Second Circuit in the instant case, nor the recent actions of the Court in *Monell, supra, Mahone v. Waddle*, 564 F.2d 1018 (3d Cir. 1977), *cert. denied*, 98 S.Ct. 3122 (1978), *McDonald v. State of Illinois*, 557 F.2d 596 (7th Cir.), *cert. denied*, 98 S.Ct. 508 (1977), and *Owen v. City of Independence*, 560 F.2d 925 (8th Cir. 1977), *cert. granted, vacated and remanded*, 98 S.Ct. 3118 (1978), it does provide a concise examination of the divergent views held by the several circuits.

The survey underscores the need for a decision by the Court in order to provide a uniform statement of the law on this issue, as applied to municipalities throughout the United States.

The Petition, at point III(B), also seeks review to consider, and further define, the standard, level and character of municipal involvement necessary to give rise to the cause of action for money damages against a municipality, either under 42 U.S.C. §1983, or, if allowed, as implied from the fourteenth amendment, pursuant to the invitation contained in both the majority, and concurring opinions in *Monell.*

Since filing the Petition, a decision has been published in *Reimer v. Short*, 578 F.2d 621 (5th Cir. 1978), in which the Fifth Circuit comments briefly on this topic, indicating that the policies of the municipality must cause the constitutional violation to be actionable,

and concluding that vicarious liability itself is insufficient as a basis for such liability. Clearly, further expression by the Court is required to settle this issue.

CONCLUSION

For the foregoing reasons, as well as those stated in the Petition, it is respectfully requested that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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Attorney for Petitioner.